

STATEMENT OF LEGAL ISSUES

I.

South Dakota maintains the common law distinctions of invitee, licensee, and trespasser. This “tripartite” system affords little protection to child social guests and other licensees who must take the land as they find it. All of our neighboring states have followed the modern trend by eliminating the distinction between invitees and licensees, and affording a duty of reasonable care for the safety of all lawful entrants upon land. *Will South Dakota follow suit?*

Trial court’s decision: The circuit court determined the landowner owed no duty under existing negligence law because the Plaintiff is a licensee .¹

Relevant law:

Andruschenko v. Silchuk, 2008 S.D. 8
Koenig v. Koenig, 766 N.W.2d 635 (Iowa 2009)
SDCL 20-9-1

II.

Landlords, in general, owe no duty once they part with complete possession of a leasehold. Exceptions exist when landlords purport to make repairs or maintain control over some aspect of the property. Here, the landlord maintained a common play area for the use of his tenants and the neighborhood children, and promised to remedy a dangerous situation discovered there. *Does the landlord have a duty of care to the neighborhood children who use his play area? Does he have a duty to complete promised repairs in a reasonable manner and within a reasonable time?*

Trial court’s decision: The circuit court determined the landlord owed no duty because the landlord did not maintain an actual “common area” and also that he owed no duty to complete promised repairs unless he had actually started making those repairs.²

¹ Record 177 (letter decision), Record 216 (order)

² Record 174 (letter decision)

Relevant law:

Clauson v. Kempffer, 477 N.W.2d 257, 259 (S.D. 1991).
Restatement (Second) of Torts, § 360
Restatement (Second) of Torts, § 362

III.

In general, individuals are not required to protect each other from the reckless or intentional conduct of others. This Court recognizes an exception where the actor's own affirmative act or omission creates or exposes another to a recognizable high degree of risk. Here, a landlord was aware that his tenant had a propensity toward reckless or intentional harm. He then promised to take steps to remedy the situation but didn't follow through. *Is the defendant liable to those harmed by the intentional or reckless conduct?*

Trial court's decision: The circuit court determined the landlord owed no duty of protection because the intentional conduct was not foreseeable.³

Relevant law:

Smith ex rel. Ross v. Lagow Construction and Development Corporation, 2002 S.D. 37
Restatement (Second) of Torts § 302B

³ Record 177 (letter decision), Record 216 (order)